IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Civil Writ Petition No. 3109 of 2001 (S/S)

Hukam Singh …….. Petitioners

Versus

State and others …… Respondents

Date of decision: 21, September 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant.

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

WRIT PETITION NO. 3109 (S/S) OF 2001.

Hukam Singh Negi …….Petitioner.

Versus

1. **State of U.P. through Principal Secretary, Department of Medical, Health and Family Welfare, U.P. Shasan Lucknow.**
2. **State of Uttaranchal through Secretary, Department of Medical, Health and Family Welfare, Uttaranchal Shasan Dehradun.**
3. **Director General, Medical, Health and Family Welfare, Uttaranchal Shasan Dehradun.**
4. **Chief Medical Officer, Dehradun.**

……..Respondents.

Mr. Manoj Tiwari learned counsel for petitioner.
Sri N.C. Gupta, S.C.

Hon'ble Prafulla C. Pant, J.

1. By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioenr has sought writ ion the nature of certiorari for quashing the impugned order dated 11.12.1998 passed by respondent no.1. Also a mandamus has been sought for directing the respondents to revise the pay scales of the Operation Theatre Attendant w.e.f. 1.1.1986 in the scale of Rs. 1200-1800/-

2. Brief facts of the case, as narrated in the writ petition are, that in the year 1987 number of vacancies were notified by the respondent no.4 for recruitment to the post of Class-III and Class-IV including the post of the Operation Theatre Attendant (for short O.T.A.) in Class-III category in the pay scale of R.s 330-495. The requisite qualification for O.T.A. was High School (Science) with six months practical experience in any private Hospital or Nursing Home. The petitioner who possessed the requisite

qualification was appointed to the post of O.T.A. after being interviewed by the Selection Committee. There were other posts also of Medical Attendant and untrained Pharmacist in the pay scale of Rs. 330-495. The requisite qualification for the Medical Attendant was Junior High School i.e. Class VIII without any requirement of training or experience. For the post of untrained Pharmacist the requisite qualification was High School in any subject without any requirement of experience or training. As against duties of Medical Attendants who merely assist Pharmacists in dispensing of medicines and help staff nurses in discharge of their duties. The duties of the post of O.T.A. includes fumigation of operation theatre, sterilization of instruments, lien and gloves. Pursuant to the recommendation of the IV Pay Commission, the Government of U.P. had been pleased to revise the pay scales of all Government servants vide G.O. dated 3.6.1989 but the post of O.T.A. was not mentioned in it due to which respondent no.4 erroneously fixed the revised pay of the petitioenr in pay scale of Rs. 825-1200/- which is the pay scale of Class-IV category. The untrained pharmacists were allowed the pay scale of Rs. 1200-1800. The lowest pay scale in Class-III according to said G.O. in 1989 was Rs. 950-1500. Feeling aggrieved by the pay fixed by respondent no.4 the petitioenr filed a Writ Petition No. 38446 of 1997 before Allahabad High Court, seeking a direction against the respondents for fixing the pay in the scale of Rs. 1200-1800. The Allahabad High Court disposed of the said writ petition on 19.11.1997 (copy Annexure 1 to the writ petition) with the direction to the respondents to fix pay scale according to rules. On the basis of said order of the High Court the

petitioner move a representation dated 1.12.1997 (copy Annexure-4 to the writ petition) before the respondent no.4 for fixing the pay in the scale of Rs. 1200-1800. Which appears to have been forwarded by the respondent no.4 to respondent no.1 who rejected the said representation vide order dated 11.12.1998 (copy Annexure-5 to the writ petition). It is alleged in the writ petition that the petitioner has been denied the pay scale arbitrarily due to him. Challenging the said order of the Government of U.P. the present writ petition has been filed.

3. On behalf of the respondent no. 2,3 and 4 counter affidavit has been filed in which it has been admitted that earlier the petitioner filed the writ petition no. 38446 of 1997 which was disposed of vide order dated 19.11.1997 by the said court. It is also admitted that on 1.12.1997 petitioner made a representation for fixing his pay in the scale of Rs. 1200-1800 w.e.f. 1.1.1986. It is also admitted that by impugned order dated 11.12.1998 the Government of U.P. has rejected the said representation of the petitioner. It is also not disputed that before the new pay scales made applicable w.e.f. 1.1.1986 the pay scale of both Medical attendant and that of Operation Theatre Attendant was Rs. 330-490/-. But it is denied if the petitioenr holding the post of O.T.A. was on Class-III. According to the respondents he was employee of Class-IV category.

4. In the counter affidavit is further stated that the post of Medical Attendant was different as against that of the O.T.A. and the Medical Attendant were required to undergo one year's Departmental Training while there was no such requirement for the O.T.A. In para 16 of the counter affidavit it is further stated that the nature of duties of both the

posts were different as the Medical Attendants were required to do the duties of the Pharmacist and Staff Nurse in view of their shortage. In para 18 of the counter affidavit it is stated that the post of the Medical Attendant was that of Class III category.

5. Heard learned counsel for the parties and perused the affidavits, counter affidavit, rejoinder affidavit, supplementary affidavit, supplementary counter affidavit and annexure annexed thereto.

6. The short question for consideration before this court is whether the petitioner is wrongly denied the pay scale due to him by the respondents and is the representation dated 1.12.1997 was arbitrarily disposed of by the respondents.

7. Admittedly the petitioner was appointed as Operation Theatre Attendant in the year 1987. This fact is also not denied by the respondents that in the year 1987, before revision of the pay scales vide G.O. dated 3.6.1989 pay scale of both the O.T.A. and that of Medical Attendant was Rs. 330-495/-. The dispute relates to the fact that how and why in the revision of the pay scales they got distinguished which gave ultimately cause of this writ petition on rejection of the representation of the petitioner. Once the respondents have admitted in para 2 of their counter affidavit that the pay scale of the Medical Attendant as well as that of O.T.A. was Rs. 330-495/- and it is not denied by them that the said scale was payable to the petitioenr as O.T.A. it is ridiculous on the part of the respondents to say that the post of Medical Attendant is of Class-III while that of the O.T.A. was of Class-IV. The classes of the Government employees are made or grouped on the basis of the pay scales. As such

this court finds arbitrary discrimination done to the O.T.A. as against the Medical Attendant.

8. Learned Standing Counsel drew my attention to the impugned order dated 11.12.1998 (which is Annexure 5 to the writ petition and Annexure-3 to the counter affidavit) and argued that Medical attendants were given 750 hours one year training and their nature of job was different than that of the O.T.A. He further contended that the Medical Attendant is a dying cadre whose services were utilized in the rural areas where the staff nurse and pharmacists were not Available. In this connection he further submitted that as against this, the post of the O.T.A. was financed by Government of India as such they can not be kept at par. I am unable to agree with the submissions of learned Standing Counsel for the reasons that admittedly in the year 1987when the posts were advertised by the respondents no. 4 both these posts were in the pay scale of Rs. 330-495/-. The revision of pay scale was to be effected from 1.1.1986 as per G.O. dated 3.6.1989 that being so the respondents should have made it clear from which date and how the posts were got separated, particularly it has not been denied in the counter affidavit if the essential qualification of the O.T.A. was not higher as against the Medical Attendant as mentioned in para 7 of the writ petition. In reply to para 7 of the writ petition given in para 8 of the counter affidavit, it is stated that the Medical Attendants were given one year training. But this fact is not denied that for the post of O.T.A. essential qualification was High School (Science) with six months experience in Hospital or Nursing Home. In supplementary counter affidavit dated 20th February 2004 in para 6 an attempt has been

made to say that as against the requirements of 8th passed for the Medical Attendant, O.T.A. is required to be only 5th Class- pass. But this appears to be not true as the rejoinder affidavit filed by the petitioenr on 24.5.2002 clearly shows through its annexure RA-3 that the Chief Medical Superintendent of Women Hospital, Rishikesh herself has recommended the Chief Medical Officer, Dehradun (respondent no.4) on 3.6.1996 the ground on which the petitioners pay scale is required to be re fixed in consonance of the pay scale given to the Medical Attendant women. Para 1,2 and 3 of the said letter is reproduced below:

> "1. यह कथन सही है कि श्री हुकम सिंह नेगी की नियुक्ति आपके कार्यालय के पत्र संख्या सी0एम0ओ0.10/87 दिनांक 19.01.87 द्वारा ओ0 टी0 अटैन्डैन्ट पद पर वेतनमान 330–495 में हुई थी। तथा सेवा पुस्तिका में अंकित प्रविष्ट से स्पष्ट है कि इनकी शैक्षिक योग्यता हाईस्कूल (विज्ञान वर्ग) एवं चिकित्सा कार्य प्रमाण पत्र के आधार पर की गई है। क्यों कि तत्कालीन वेतनमान 330.495 का पद चतुर्थ श्रेणी में नहीं था। जबकि चतुर्थ श्रेणी का वेतनमान 305–390 एवं शैक्षिक योग्यता पांचवी पास थी।
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> 2. आपके पत्रांक सी.एम.ओ./जी0ओ0/89 दिं0 29.11.89 द्वारा इस कार्यालय में प्राप्त शा0संख्या वे0अ0–1–1763/10–39(एम)/89 दिनांक 3.6.89 के साथ संलग्न पुनरीक्षित वेतनमान सारिणी में हालांकि ओ0टी0 अटैन्डैन्ट का पद एवं पुनरीक्षित वेतनामान इंगित नहीं था। इसी क्रम में उक्त शासनादेष में वेतनमान सारिणी में वर्णित वेतनमान 330–495 का पुनरीक्षित वेतनमान 825–1200 था, अतः इनका पुनरीक्षित वेतनमान दिनांक 1.1.87 को 825–1200 में ही निर्धारित किया गया तथा यही वेतनमान इन्हें वर्तमान में भी दिया जा रहा है।
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> 3. आपके पत्रांक सी.एम.ओ./प0क0/गार्ड फाइल/ 95–9610256 दिनांक 13.12.95 द्वारा शा0 संख्या 3129/5–11–95–9(187)/ 94 दिनांक 12.9.95 की प्राप्ति हुई, जिसमें शा0 संख्या वे0आ0–1–1739/दस–41(एम)/89 दिनांक 19.5.89 का संदर्भ देते

हुए ओ0टी0पद का वेतनमान 305–390 एवं 330–495 को एक ही पद के दो वेतनमान अंकित कर इनका पुनरीक्षित वेतनामन 750–940 एक की वेतनामन में निर्धारित कर दिया गया।"

9. Annexure SA-1 field to the supplementary affidavit dated 24.08.2003 due on petitioenr shows that another O.T.A. of Mainpuri District is being paid revised pay scale of Rs. 950-1500 which is lowest pay scale of Class-III (as against the pay scale of Rs. 825-1200 being paid to the petitioner). In reply to this in the Supplementary counter affidavit filed on 20.02.2004 in its para 8 it is state don behalf of the respondent that Chief Medical Officer, Mainpuri is not competent to revise the pay scale of his O.T.A. The above fact makes this court believe that the post of O.T.A. due to inadvertence appears to have been left out in the Samta Samiti Report recommendation, which caused the confusion. The stand taken by respondent, after admitting in para two of counter affidavit that the pay scales of both of O.T.A. & Medical Attendant were same at Rs. 330-495, is wrong that one is Class-III employee and another Class-IV.

10. In view of the circumstances and discussions as above the impugned order dated 11.12.1998 passed by the respondents rejecting the representation of the petitioner is liable to be quashed. The writ petition is therefore allowed. The impugned order dated 11.12.1998 passed by the respondent no.1 is quashed. Respondent no. 2 is directed to decide the representation dated 01.12.1997 submitted by the petitioner afresh within a period of three months from today. No order as to costs.

Dt/- 21st September 2004.

P. Bandhavakar **(Prafulla C. Pant, J.)**